

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481-rdd

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In the Matter of:

DELPHI CORPORATION,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

July 30, 2009

11:52 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

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HEARING re (continue from 7/29/2009) Motion to approve (a)  
Supplement to motion for order (i) approving modifications to  
debtors' first amended plan of reorganization (as modified) and  
related disclosures and voting procedures and (ii) setting  
final hearing date to consider modifications to confirmed first  
amended plan of reorganization and (b) Request to set  
administrative expense claims bar date and alternative sale  
hearing date.

HEARING re (continue from 7/29/2009) Agenda for plan  
modification hearing.

Transcribed by: Penina Wolicki

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7 JARED WORMAN, Greywolf Capital

8 JEFF GOLDFARB, Interested party

9 STANTON RAY, Interested party

10 DAVID SHERBIN, Interested party

11 JAMES SUMPTER, Interested party

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P R O C E E D I N G S

THE COURT: Pleased be seated. Okay. Good morning.  
We're back on the record in In re Delphi, on the debtors'  
motion for approval of plan modification.

MR. BUTLER: Your Honor, good morning. Jack Butler,  
Kayalyn Marafioti, here on behalf of the debtors for the second  
day of the plan modification hearing. Your Honor, when we left  
last evening, on the record, the objection or the motion of Mr.  
James Sumpter for a COBRA motion at docket number 18366 was the  
matter being considered by the Court. And we had had oral  
argument on it with Mr. Sumpter, who, I believe, is on Court  
Call this morning.

THE COURT: Are you on, Mr. Sumpter?

MR. SUMPTER: Yes, I am.

THE COURT: Okay. Good morning.

MR. SUMPTER: Good morning.

MR. BUTLER: And, Your Honor, just two matters that  
the debtors wanted to place into the record. One, Mr. Sumpter,  
in the colloquy with the Court yesterday, indicated that he  
would be submitting some additional information. He did submit  
additional information. It's about 4-, 500 pages of documents  
over eight tabs. We've marked it as Joint Exhibit 627. And I  
would move its admission into the record so that it's part of  
the record.

THE COURT: Okay. That's fine.

1 (Documents submitted by Mr. Sumpter were hereby received in  
2 evidence as Joint Exhibit 627, as of this date.)

3 MR. BUTLER: The other thing, Your Honor is, we went  
4 back last evening to check the transcript of the March 11th  
5 hearing with respect to the COBRA matters that were discussed  
6 there. And that transcript is at Joint Exhibit 502. And on  
7 page 57 of that transcript, there is an exchange between the  
8 Court and myself on this subject, in which the Court said,  
9 starting at line 8: "I think it was raised," speaking to the  
10 COBRA issues, "and it's something I considered. And I believe  
11 that the debtors' view of the statute and the regs is correct.  
12 But I also think that it's not something I should definitively  
13 rule on as if it were declaratory judgment in a 363(b)  
14 proceeding. Part of my ruling is premised upon my belief that  
15 you're correct, but I think it's actually very similar to the  
16 Orion facts, when the Second Circuit said the Court can't be  
17 the guarantor of the logic of the motion by actually ruling on  
18 something like this. I'm not even sure who the other side  
19 would be here. It may retirees; it may be someone else, so."  
20 Ending at line 18.

21 And while the debtors still believe that arguments and  
22 res judicata would -- are legitimate, I think there is this  
23 exception that Your Honor mentioned. And I wanted to put into  
24 the record today, just so this record was clear.

25 THE COURT: Okay.

1 MR. BUTLER: Those are the only two things we have,  
2 Your Honor, on that matter.

3 THE COURT: All right. Well, I considered the  
4 parties' arguments overnight and this morning on this issue.  
5 And the first one I considered was the res judicata argument.  
6 But I concluded that, as I did back in March, that although the  
7 issue was raised by parties to the litigation over the debtors'  
8 OPEB motion, the issue of the duration of the COBRA right was  
9 not finally determined by me except insofar as I determined  
10 that the debtors have the better view of it for purposes of an  
11 action out of the ordinary course, and therefore that I would  
12 authorize the action; taking into account the fact that if the  
13 issue were actually decided, it might go the other way, but  
14 that in the meantime the debtors could implement what they  
15 implemented.

16 Even if res judicata did apply, I went on to consider,  
17 again, the merits of the argument which had been raised by  
18 parties who opposed the OPEB motion, which again, is that the  
19 debtors had an obligation to continue to provide coverage for a  
20 covered employee's lifetime, which would include, under the  
21 regs and statute, retirees, based upon a substantial  
22 elimination of coverage. That's the same issue that Mr.  
23 Sumpter seeks to have the Court deny, or at least delay ruling  
24 on the plan modification motion so that he can obtain a ruling,  
25 the request for which he attaches to his motion, interpreting

1 both 29 U.S.C. Section 1163 and 26 U.S.C. Section 4980(b) in  
2 the way he seeks to do it, insofar as it applies to retirees,  
3 where there's been a substantial elimination of coverage.

4 The statutory issue is apparent from the two sections  
5 of the U.S. Code that I've cited. 29 U.S.C. Section 1163  
6 provides that: "The term 'qualified event' means with respect  
7 to any covered employee, any of the following events which but  
8 for the continuation of coverage required under this part,  
9 would result in a loss of coverage of a qualified beneficiary."  
10 And then, of those six events, the sixth is: "A proceeding in  
11 a case under Title 11 United States Code commencing on or after  
12 July 1, 1986 with respect to the employer from whose employment  
13 the covered employee retired at any time." That qualifying  
14 event applies where there is a loss of coverage. And there's  
15 no time limitation on it.

16 However, the following sentence of the same statute  
17 states: "In the case of an event described in paragraph 6,"  
18 i.e., a bankruptcy case that started after July 1, 1986, "a  
19 loss of coverage includes a substantial elimination of coverage  
20 with respect to a qualified beneficiary described in Section  
21 607(3)(c) 29 U.S.C. Section 1167(3)(c)," which would be a  
22 person who retired -- would include a person who retired before  
23 the substantial elimination of coverage. And here's the key  
24 language: "Within one year before or after the date of  
25 commencement of the proceeding."

1           The debtors have argued consistently that the phrase  
2     "within one year before or after the date of the commencement  
3     of the proceeding" creates a twenty-four month window for there  
4     to be a qualifying event, not only for loss of coverage, but  
5     also for a substantial elimination of coverage, which is what  
6     pertains here. Therefore, if the substantial elimination of  
7     coverage occurs within twelve months before or twelve months  
8     after the date of the start of their bankruptcy case, then the  
9     statute would be triggered, either it would be a qualifying  
10    event resulting from a substantial elimination of coverage  
11    during that twenty-four month period, but not thereafter.

12           Mr. Sumpter, as did other objectors to the OPEB  
13    motion, but Mr. Sumpter here, would read the language to state  
14    that the event occurs in the period beginning twelve-months  
15    before the commencement of the case under Title 11, but that  
16    the event -- if the event occurs any time after the  
17    commencement of the Chapter 11 case, then a substantial  
18    elimination of coverage would qualify as a loss -- a full loss  
19    of coverage.

20           I've reviewed the language of the statute, first and  
21    foremost, and believe that, as I did in March, that to construe  
22    it as Mr. Sumpter would like, there would either have to be  
23    commas around the phrase "or after", or it would have to say  
24    "one year before or at any time after", i.e., that the two  
25    words or the three words "at any time" would have to be added

1 to the statute to separate the concept of a postpetition  
2 substantial elimination of coverage from the one year  
3 antecedent clause.

4 To the extent that there is any ambiguity in the  
5 statute, I do not believe that any of the legislative history  
6 or quasi-legislative history in the form of Congressional  
7 research reports, either that I've located or that Mr. Sumpter  
8 has provided, which I've reviewed and which are now in  
9 evidence, sheds additional light, in any meaningful way, on  
10 this interpretation issue. As I had read them, they don't  
11 discuss this issue, they simply repeat the language "within one  
12 year before or after the date of the commencement of the  
13 proceeding." They do note that wherever there's a loss of  
14 coverage, the mere fact of the commencement of the case is a  
15 qualifying event. But that's, I think, here, neither here nor  
16 there.

17 The typical language that you see appears, for  
18 example, in H.R.Rep. 99-727 at 464, 465 1986 U.S.C.C.A.N. 3607,  
19 3861 through 3862, where the report states: "In the case of  
20 such a qualifying event, a loss of coverage includes a  
21 substantial elimination of coverage with respect to a qualified  
22 beneficiary, as described below, within one year before or  
23 after the commencement of the Title 11 proceeding. For  
24 example, an employer contemplating filing for Title 11  
25 bankruptcy proceedings, may not, in the year before, or after

1 filing for Title 11 reduce the health insurance coverage so  
2 that it offers minimal coverage. Such a reduction in health  
3 insurance coverage for retirees, their spouses and dependent  
4 children and widows, would trigger the continuation of coverage  
5 provision, included in this legislation," i.e., it just repeats  
6 the statutory phrase. That's also what Colliers does at  
7 paragraph 114.103, where it again, simply repeats this phrase.

8 I believe, again, without the commas, the plain  
9 meaning of the statute is that the one year reference refers to  
10 both the one year before or after language in the statute.  
11 That is also the interpretation by the only authority, which  
12 albeit is somewhat limited, on this issue, that specifically  
13 discusses this issue, which appears in the Employee Benefits  
14 Handbook Database, updated May 2009 by Jeffrey Mamorsky,  
15 editor, part 4, chapter 39, "COBRA Healthcare Continuation" by  
16 Jack Helitzer (ph.), which states at section 39.20, "If as a  
17 result of a Chapter 11 bankruptcy, a retiree's health care  
18 coverage terminates or is substantially eliminated within one  
19 year before or after the start of the Chapter 11 proceedings  
20 (i.e., at any time during the two-year period), the retiree and  
21 the retiree's spouse and/or dependent children, may elect COBRA  
22 continuation coverage for life."

23 I've also considered another statute that I'm familiar  
24 with that was originally phrased in the same way as this  
25 statute, which is a former provision of the Internal Revenue

1 Code, 26 U.S.C. Section -- I'm sorry, not of Internal Revenue  
2 Code -- former provision found at 26 U.S.C. Section 118, which  
3 stated -- which covered loss deductions for sale of stock or  
4 securities, and it stated, "In the case of any loss claimed to  
5 have been sustained at any or other disposition of shares of  
6 stock or securities, where it appears that within thirty days  
7 before or after the date of such sale or other disposition, the  
8 taxpayer has acquired otherwise than by bequest or inheritance,  
9 or has entered into a contract or option to acquire  
10 substantially identical property, and the property so acquired  
11 is held by the taxpayer for any period after such sale or other  
12 disposition, no deduction for the loss shall be allowed."

13 That language, which in essence, contains the same  
14 concept, although there it's thirty days before or after the  
15 event, was subsequently amended to read, "In the case of any  
16 loss claimed to have been sustained from any sale or other  
17 disposition of shares of stock or securities, where it appears  
18 that within a period beginning thirty days before the date of  
19 such sale or disposition and ending thirty days after such  
20 date, the taxpayer has acquired," etcetera, etcetera.

21 I don't believe any change in the statute was  
22 intended, but rather the language, which would be consistent  
23 with Delphi's interpretation of 26 U.S.C. 4980(b) and 29 U.S.C.  
24 Section 1163 was that the time limitation applied to both the  
25 before and after periods.



1           The argument was made by Mr. Sumpter that these  
2           provisions grew out of the LTV case, which is true. But in  
3           that case, LTV eliminated retiree benefits on the first day of  
4           its case, which would constitute a total loss. I don't believe  
5           it's inconsistent with that context for Congress to have  
6           limited the scope of continuation coverage for less than a  
7           total loss to the twenty-four month window that is provided in  
8           the statute. And it is, I guess, odd or inconsistent with Mr.  
9           Sumpter's interpretation that the lesser elimination, but still  
10          an elimination, for substantial losses, would go back twelve  
11          months before the filing, but not for a total loss, would  
12          suggest, again, that Congress intended, where there was a  
13          substantial elimination but not a complete loss, to have a more  
14          proscribed period on the back end to equal the greater twelve-  
15          month period on the front end.

16                 So for those reasons, I continue to believe that the  
17          plan or the modification of the plan is not premised upon an  
18          improper application of COBRA and OBRA, O-B-R-A, and that  
19          certainly I should not wait for an interpretation of these  
20          provisions that could well be a long time coming, particularly  
21          given all of the time pressures that these debtors and their  
22          creditors are under, and the likely expiration of financing  
23          being the primary one.

24                 I also note, and I don't know whether this is the  
25          case, and I recognize that the record is closed, but it was

1 stated that the reorganized debtor intends to have no actual  
2 employees, but rather only consultants and professionals to  
3 enable it to liquidate its assets and make distributions. On  
4 that score, it appears to me that this issue might, in any  
5 event, be moot, given that it's not clear to me whether the  
6 debtor will continue to pay premiums or will be providing any  
7 further group health plan, given they won't be having  
8 employees. If that is the case, then under 26 U.S.C.  
9 4980(b)(3)(ii) and (iii) the right to coverage would end in any  
10 event. But that doesn't change in any way my primary reason  
11 for denying this objection, which is that I believe the time  
12 limitation in the statute should be interpreted as the debtors  
13 have interpreted it.

14 MR. BUTLER: Thank you, Your Honor.

15 MR. SUMPTER: Your Honor, if I could just ask a few  
16 points of clarification?

17 THE COURT: Sure.

18 MR. SUMPTER: Is it your ruling that there was only  
19 partial loss of coverage and not complete loss of coverage?

20 THE COURT: Well, the requests and the motion deals  
21 with partial or not partial but substantial loss as opposed to  
22 total loss. And that's what I've focused on. If there had  
23 been a total loss, I think that would be a different result.  
24 But that's not what I focused on. But if it is a total loss in  
25 the sense of there being no coverage for any employees, then

1 the provisions that I just referenced, I think, would render  
2 the issue moot in any event. Because once there's no coverage,  
3 then there's no right to continuation, i.e., no coverage for  
4 any employees, no maintenance available.

5 MR. SUMPTER: Can I - I definitely understand the  
6 ruling, and I'm not challenging that. But I was kind of -- am  
7 I to understand that these correcting some substantial loss  
8 from that motion. Retirees lost all their coverage. But the  
9 retirees still have a claim, for any type of COBRA that was  
10 available. But if the employer from Europe had no coverage,  
11 then COBRA wouldn't be available.

12 THE COURT: Well, again, the premise then the request  
13 that you wanted to make for a ruling for the regulatory agency  
14 was premised on there being a substantial loss of coverage, and  
15 that's what I focused on. So anything beyond that would really  
16 be an advisory ruling.

17 MR. SUMPTER: I just don't see how I can get that  
18 meaning.

19 THE COURT: Okay.

20 MR. SUMPTER: All right. I was -- I was including --  
21 I guess what I thought was to my mind, total loss of coverage  
22 or partial loss. I was including all of that in my mind in the  
23 loss.

24 THE COURT: All right. Now, I will note from the  
25 order approving the OPEB modifications, the debtors kept open

1 and gave to parties a right to purchase coverage for -- I  
2 forget the exact amount of time, but it was about sixty days.

3 MR. SUMPTER: Oh, right. Yes.

4 THE COURT: So I'm not making a finding on this, but  
5 it seems to me that there was not a total loss because --

6 MR. SUMPTER: Well, OPEB --

7 THE COURT: -- that was all.

8 MR. SUMPTER: Well, in other words, there's some  
9 standard to the fact that I was required to pay one hundred per  
10 cent of the cost of the policy, but that can still be a partial  
11 loss as you see it.

12 THE COURT: That's my understanding. But again, I'm  
13 premising this on what you had filed in the form of your  
14 objection.

15 MR. SUMPTER: Okay.

16 THE COURT: Okay. Thank you, Mr. Sumpter.

17 MR. SUMPTER: Thanks. I really appreciate you taking  
18 the time to really give it a thorough review.

19 THE COURT: Okay. Fair enough. Thank you, sir.

20 MR. SUMPTER: All right.

21 MR. BUTLER: Your Honor, as a procedural matter, this  
22 was filed as a motion. Should I submit a separate order for  
23 the motion as well, or just --

24 THE COURT: I think it's a good idea. I had scheduled  
25 it for this hearing, because it seemed to be the fastest way to

1 get it heard. Mr. Sumpter wanted expedited relief, and it  
2 essentially could be heard in this context as well as in the  
3 context of a separate motion. So, but I think you could -- I  
4 don't think I necessarily need a separate order, because I'm  
5 treating it -- I guess you could say that for the reasons  
6 stated, because of the ruling on it as far as it constitutes a  
7 plan objection, the motion is moot.

8 MR. BUTLER: Okay.

9 THE COURT: So I guess will want a separate order.

10 MR. BUTLER: All right, Your Honor. Thank you.

11 THE COURT: Thank you.

12 MR. SUMPTER: Thanks again.

13 THE COURT: All right. So leaves the order. And I  
14 don't know whether you've finished on that or not. I saw some  
15 people going up and down the hallway still.

16 MR. ABRAMS: Your Honor --

17 THE COURT: But also, if you -- I think you wanted to  
18 make some closing remarks as well.

19 MR. BUTLER: I do, Your Honor. And I plan to make  
20 those closing remarks and then to ask for a brief recess so I  
21 can consult with all the people who have been working on the  
22 final form of order.

23 THE COURT: Okay. All right. But you don't need to  
24 make it a filibuster. I'll give you the recess anyway to let  
25 them keep working.

1 MR. ABRAMS: Don't tempt fate.

2 MR. BUTLER: I hadn't intended to do that. In fact,  
3 Your Honor, as I --

4 THE COURT: I didn't think you did.

5 MR. BUTLER: We do have an abbreviated close, in light  
6 of all of the objections having been resolved at this point.

7 THE COURT: Okay.

8 MR. BUTLER: But there are some matters that the  
9 debtors want to place on the record. And one of the -- among  
10 other things, and I did consult with some counsel in describing  
11 the transactions, much of what the Court has taken into  
12 consideration for good reasons has been marked highly  
13 confidential and is not publically available. And part of what  
14 I wanted to do in these closing remarks is to at least give an  
15 overview of the transactions that are before the Court.

16 THE COURT: Okay. Before you do that, there was  
17 something I meant to do yesterday that I didn't do, given the  
18 lateness of the hour.

19 As you noted, most of the objections to this motion  
20 were filed pro se by individual employees and former employees  
21 of the debtors. I've expressly dealt with about 600 of them  
22 that focused on one particular issue, which was the severance  
23 related ones, which are moot. But the other ones all dealt  
24 with termination of the pension plans. And I did not address  
25 them specifically, however, in looking at them, I concluded

1 that the arguments made by the three union objectors as well as  
2 Messrs. Cunningham and Black really did the best job of raising  
3 the arguments against approval of the PBGC settlement and the  
4 plan modification order.

5 And so, when I addressed those two objections, I was  
6 also addressing the 1,200 or so pro se individual objections.  
7 Each of those objections, like the unions' objections and like  
8 Mr. Cunningham and Mr. Black's objection, clearly state the  
9 personal cost and disruption caused by the termination of  
10 pension plans. But as a legal matter, the legal arguments they  
11 raised, to the extent that they did raise them beyond simply  
12 noting their personal cost, were all subsumed by those two  
13 objections that I considered at length yesterday. So in  
14 dealing with those two objections I also overruled or denied  
15 the other pro se ones.

16 MR. BUTLER: Thank you, Your Honor. Your Honor, first  
17 some housekeeping business, and then some closing remarks and  
18 perspective on this plan modification hearing.

19 In terms of housekeeping, one of the things that we're  
20 obligated to do under Section 1123(a)(7) is adequately disclose  
21 at this hearing the identities and affiliations of individuals  
22 proposed to serve on or after the effective date as officers,  
23 directors of reorganized DPH Holdings, as set forth in section  
24 7.5 of the modified plan.

25 Under the terms of the organization of that entity,

1 the debtors have designated John C. Brooks, B-R-O-O-K-S, as the  
2 authorized representative of DPH Holdings. Mr. Brooks has been  
3 a long-time employee of Delphi, first hired by General Motors  
4 in 1971, and has been an executive since 1977. He spent the  
5 entirety of his thirty-eight years with the company in the  
6 company's finance area, and has served in a variety of finance  
7 capacities at the company. Currently, he's the finance  
8 director of North America for the DEEDS (ph.) product line, for  
9 Delphi's electrical and electronics architecture division. And  
10 he is resident in Troy, Michigan. And I needed to make that  
11 designation formally on the record today.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, I would also indicate that we  
14 have provided in our omnibus reply, at docket number 18659, at  
15 Appendix A to that, and it's also Joint Trial Exhibit 632, a  
16 detailed chart that goes through the 1127 factors and  
17 incorporates the 1129 factors and addresses each of those  
18 factors. We prepared that chart so I would not need to  
19 necessarily, in the context of the Court having, perhaps,  
20 addressed objections, go through those on the record. I would  
21 just simply point those out to the Court and incorporate those  
22 as part of my closing argument.

23 THE COURT: Okay.

24 MR. BUTLER: The debtors believe that we have complied  
25 with 1127 and 1129 as set forth in that appendix.



1 Your Honor, in terms of the final form of plan  
2 modifications and the final form of order, again, just, I want  
3 to briefly outline the record and the appropriate exhibit  
4 designations so that the record is clear on that.

5 In terms of the form of plan modifications, those were  
6 originally filed in connection with the June 16th order that  
7 allowed -- the plan modifications that we resolicited  
8 acceptances and rejections of, at docket number 17030, and as  
9 Joint Exhibit 1. There have been iterative versions filed at  
10 Joint Exhibit 632 and Joint Exhibit 8. And the final form of  
11 plan modifications have been marked Joint Exhibit 4. And we'll  
12 be providing those to the Court at the conclusion of this  
13 hearing.

14 THE COURT: Okay.

15 MR. BUTLER: And those modifications, I believe, have  
16 been agreed to by all the relevant parties that needed to  
17 review them.

18 With respect to the final form of plan modification  
19 order that we're submitting for Your Honor's review --

20 THE COURT: And I'm sorry, that final form, is that  
21 still the July 28th, or is that --

22 MR. BUTLER: No, it's -- there are some --

23 THE COURT: Okay.

24 MR. BUTLER: -- we did a little work overnight. But  
25 there are some -- we'll be providing the -- a black-line to

1 Your Honor. But those are -- there are a couple of additional  
2 changes. They are mostly knits.

3 THE COURT: Okay.

4 MR. BUTLER: But there are some clarifications that  
5 parties wanted, and we accommodated them.

6 THE COURT: Okay.

7 MR. BUTLER: With respect to the final form of plan  
8 modification order, which we understand is still subject to  
9 Your Honor's review and comment, the parties originally  
10 submitted a form of that, again, with our replies, the first  
11 time that was publically released, at docket number 18659 at  
12 Joint Exhibit 632. We updated it based on negotiations  
13 immediately prior to the commencement of this hearing. And  
14 that was filed at Joint Exhibit 11 with a black-line to what  
15 had been publically released marked as Joint Exhibit 9.

16 We are in the process of completing that order now.  
17 It is a requirement that the order be mutually satisfactory to  
18 the parties of the MDA including to the debtors, as to the  
19 basis upon which we obtained the board of directors' support  
20 for designation this transaction. The pure credit bid is the  
21 successful transaction. That document, which I'm advised is  
22 something we'll be hopefully done with very shortly this  
23 morning, or early this afternoon, now, is going to be marked  
24 Joint Exhibit 12 with a black-line back to Joint Exhibit 10 --

25 THE COURT: Okay.

1 MR. BUTLER: -- so that those will be the exhibits  
2 numbers, and we will hope to furnish those shortly.

3 THE COURT: On the plan, you say there are a couple  
4 provisions that are more than knits, or --

5 MR. BUTLER: No, the plan -- I don't believe, and I  
6 don't --

7 THE COURT: They're clarifying. There's nothing  
8 that's new --

9 MR. BUTLER: -- I believe the plan modification is  
10 all -- everything is clarifying. And it's been the debtors' --  
11 as I think Your Honor knows, since we -- all of the editorial  
12 changes since the modified plan that was filed on June 16th,  
13 from the debtors' perspective, all of these have been  
14 clarifying modifications, not -- they're nonsubstantive and  
15 nonmaterial, but are viewed to clarify the intent of the  
16 parties.

17 THE COURT: Okay.

18 MR. BUTLER: I should also just indicate, Your Honor,  
19 I'm not going to dwell on this, that we are, as we indicated in  
20 our plan modification motion, we are seeking to invoke the  
21 cram-down provisions of Section 1129(b) of the Bankruptcy Code.  
22 And that is because, as you know from the earlier discussion on  
23 voting, while there were five classes that voted -- impaired  
24 classes that voted to accept the plan, there were other classes  
25 that did not.

1 Mr. Rosenberg spoke on behalf of the creditors'  
2 committee as to the committee's recommendation regarding cram-  
3 down. And obviously, we need to demonstrate, and we believe  
4 this record does demonstrate, that the plan does not  
5 discriminate unfairly, and is fair and equitable with respect  
6 to the nonaccepting impaired classes. We think we've been able  
7 to demonstrate that, and I will discuss that -- we discussed  
8 that in length in our brief, and I'm not going to go through  
9 the legal arguments here, now, other than to formally request  
10 that we invoke the cram-down provisions, pursuant to the terms  
11 of our motion and as set forth in our response reply papers.

12 THE COURT: Okay.

13 MR. BUTLER: Your Honor, that leads us to some closing  
14 remarks, and maybe just a few minutes of perspective. This has  
15 been, in some respects, I think, an extraordinary proceeding  
16 for the participants involved, and perhaps for the Court  
17 itself. Your Honor yesterday commented about the occasional  
18 case where unresolved contingencies in the confirmation order  
19 actually end up being not resolved. It doesn't happen often.  
20 The world in which we live in today is itself extraordinary,  
21 and the fact that the parties have been able to navigate  
22 through these last months since January of 2008, I think, has,  
23 from the debtors' perspective, really is somewhat remarkable.  
24 And I think that is tempered only by the fact that the parties  
25 recognize that everybody's had to sacrifice expectations from

1 what was in the plan back in January of 2008.

2 What we have -- when we thought about this, we  
3 prepared a few exhibits. These are all part of Joint Trial  
4 Exhibit 53. These have formally been marked "Highly  
5 Confidential". And as to these slides only that I'm going to  
6 use in my closing, the debtors are removing the designation of  
7 "Highly Confidential" from them. And we use them in these  
8 closing remarks.

9 Essentially, and I think much to the -- and I think  
10 the parties and the Court will appreciate this -- nobody wants  
11 to do a blow-by-blow of what's happened over the last fifteen  
12 months. But there are, sort of, seven moments that, from the  
13 company's perspective and from that of the company's board and  
14 directors, a board by the way, that met twenty-eight times in  
15 the latter part of 2008, and so far this year, has met twenty-  
16 two times in session to address the issues that they needed to  
17 address in carrying out their fiduciary responsibilities.

18 There were really seven moments. And I'm going to use  
19 the major events timeline that we have here as Charts 4 and 5  
20 as part of Exhibit 53, and then some additional charts that my  
21 colleague will help me with, in a few minutes.

22 But we started out with Your Honor's confirmation  
23 order on January 25th. And the first real extraordinary event  
24 for us, or number one of the seven, was following April 4th  
25 when the transaction did not close as the plan investors walked

1 away. It caused a summer of reflection. And it caused a lot  
2 of work to be done by the company, its creditors' committee,  
3 General Motors, and others. And the first chart I'll point out  
4 to you is Chart 13, the "Range of Strategic Alternatives".

5 By the summer of 2008, the company had sat down with  
6 its investors and with its lenders, with its creditors and  
7 others, and said sort of, what do we do now. The confirmed  
8 plan with the plan investors litigation had been commenced for  
9 specific performance. We understood that we needed the  
10 liquidity support from General Motors. They had begun to  
11 provide it. As the record has indicated, they provided almost  
12 a billion dollars over the course of the summer, leading up to  
13 September of 2008. And while they were repaid much of that,  
14 today they have lent another 850 million dollars to the company  
15 to support its operations since April 4th of last year.

16 And the first moment really was sort of saying what  
17 are the alternatives we had. And the company sat down and  
18 thought about what all of its strategic alternatives might be.  
19 Could it do a standalone plan through plan modifications? Was  
20 there a rights offering available? Because when the  
21 transaction didn't work, we basically said we should go back to  
22 our creditors at the bottom of the waterfall and work up and  
23 see who will provide capital to the company.

24 We worked first with the creditors' committee trying  
25 to sort out whether or not bondholders -- prepetition

1 bondholders could be that source. That turned out not to be  
2 the case. And we continued to move up the waterfall, trying to  
3 find a party that was prepared to provide capital to the  
4 company. We said we would remain in Chapter 11 until the  
5 capital markets improve. Could we reorganize without ex-North  
6 America, without the North American operations, or would we  
7 have to sell some or all of the assets either in a plan or in a  
8 363 sale?

9           These alternatives were not only reviewed by our major  
10 stakeholders, but they gave us input. Some of the boxes on  
11 this chart were suggested by them and were reviewed carefully  
12 by the parties over the course of that summer. The summer of  
13 2008 led to a determination that the company would, in fact,  
14 reaffirm its business plan, seek to renegotiate its agreements  
15 with General Motors, seek to move forward to modify the plan,  
16 and then to obtain emergence capital.

17           And Chart 14 really talks about the decision tree that  
18 the board of directors went through, in the next month, in  
19 August of 2008, with its stakeholders. And these are the kind  
20 of charts that each month we would sit with the creditors'  
21 committee and walk through with the senior management of the  
22 company and say let's think about what should we do and how  
23 should we do this. And Chart 14 simply says, look, we need to  
24 go through a decision tree to say is a revised plan feasible?  
25 Should we do a pension transfer? Or should we terminate

1 pensions? Is revising the GSA and MRA on a consensual basis  
2 preferable to getting into litigation with General Motors? Can  
3 you do a standalone plan versus other alternatives? Is, in  
4 fact, a standalone plan feasible in light of what people even  
5 in August recognized would be DIP maturity by the end of 2008,  
6 because it became apparent, even at that time, that it was  
7 unlikely that our DIP lenders would find a hundred percent of  
8 the vote required to extend the DIP. And is execution of the  
9 standalone plan feasible in light of the capital markets? And  
10 if not, then all the alternatives you saw on the previous page  
11 were sort of in the decision tree to think about how we would  
12 operate.

13 And that was how the company thought about it, and  
14 that's how we thought about it and discussed it with our  
15 stakeholders. That led to a series of events in September. As  
16 Your Honor is aware, we ended up amending the GSA and MRA. We  
17 worked through that decision tree and concluded that we should  
18 execute the GSA and the MRA amendments and complete the first  
19 of the 414(L) transfers, which addressed a fair amount of the  
20 HRP at that point in time. And we moved forward. That was  
21 really the first major set of events.

22 The second major set of events occurred at the end of  
23 September and beginning of October. Shortly after Your Honor  
24 approved the amended GSA and MRA and also approved our  
25 determination to freeze the salaried and subsidiary pension



1 plans, the capital markets were in considerable flux. It was  
2 on October 2nd that Congress passed TARP for the first time.  
3 And we filed our plan modification motion, back on October 3rd,  
4 the motion that's before the Court today, albeit it has been  
5 substantially modified and changed since that time. And on  
6 October 3rd, the company believed that it had solved the issues  
7 that it needed to go with the support of its creditors and  
8 lenders and General Motors, only to have what was an  
9 unprecedented change in the world occur in the fourth quarter  
10 of 2008.

11 And so we found that that second phase leading up to  
12 the filing of the plan modification motion was almost  
13 immediately obviated by what had changed with the changes in  
14 the capital markets. Not to dwell on them, but there were  
15 unprecedented changes in the capital markets and in the  
16 automotive industry, reflected by some of the next charts. On  
17 Chart 7, one only needs to look at some of these graphs for  
18 about two seconds to understand what's happened to the S&P  
19 index, what that is reflective of the capital markets on Chart  
20 7. On Chart 8, you take a look at the leverage loans. This is  
21 a company that needs leveraged capital, prior to the  
22 transaction we put in today. And you look, ultimately what  
23 happened to the discount spread of leveraged loans. It  
24 basically shows you the market closed. That's a spike that's  
25 unprecedented over almost -- a long period of time, from '97 to

1 '09 this is this chart.

2 The next chart shows you what happened to the average  
3 bid of leveraged loans. Just as the price our debt plummeted,  
4 so did the price of debt on virtually every company in America  
5 and in the leveraged loan business. And there is some recovery  
6 today, but it's only the beginning of the recovery that we're  
7 expecting.

8 If you look at the automotive industry. Why did  
9 General Motors and Chrysler end up in Chapter 11 in their  
10 transactions, and why have most of the top suppliers commenced  
11 Chapter 11 cases recently? And you only have to look at Chart  
12 10 and understand the events that have occurred and look at  
13 annual U.S. light vehicle historical demand, and look at,  
14 again, the unprecedented stock drop from what had been north of  
15 16 million vehicles being produced to something in the range of  
16 something south of 10 million. For any industry to be able to  
17 adjust itself to that change in capacity and demand in a very,  
18 very short period of time is, again, unprecedented. It was  
19 unprecedented in the fifty-year or sixty-year history -- recent  
20 history of the automotive markets.

21 And that, obviously, led to the crisis that has been  
22 affecting this case and affecting most other cases, and  
23 indicated on Chart 11. And you'll look at the number of OEMs,  
24 financial companies related to the OEMs and auto suppliers that  
25 have been in serious distress, either reflected by their credit

1 ratings or by the fact that they've actually had to reorganize  
2 under the bankruptcy laws here in the United States.

3 All of that activity was beginning. Some of it  
4 occurred in 2009, but all of it was really focused in the last  
5 half of 2008, and in the fourth quarter. The real question for  
6 the people in these cases were, would there be any governmental  
7 support of the sector, and how would that support come? And  
8 that determination really was what led to the third memorable  
9 event in the last really major series of events in the last  
10 period of time since our confirmed plan, and that was in  
11 December.

12 In December of 2008, while we all waited to find out  
13 whether the government would provide any financing to the  
14 automotive sector, our DIP matured. We needed more money from  
15 General Motors. And the stakeholders came together in what  
16 also was an unprecedented series of agreements, by fashioning  
17 what we all came to call an accommodation agreement, an  
18 agreement that Your Honor approved in December, which allowed  
19 us to operate what has now been seven months past the maturity  
20 of our DIP financing, with the support of our stakeholders and  
21 our DIP lenders, in order to be able to try to find an  
22 appropriate resolution of these cases.

23 So we ended -- I think we ended the year almost in a  
24 stage of paralysis here in the automotive sector, waiting for  
25 the answer that finally came from the then-Bush administration

1 at the very end of the year, closing their curds just before  
2 New Years, in which the government decided -- the  
3 administration decided to provide TARP money to General Motors,  
4 basically indicating it was unlikely they were going to  
5 directly support the supply sector, but at least opened the  
6 door for there being some financial support of an industry that  
7 was in major crisis and an industry that affects so much of the  
8 American economy and the global economy, in ways that I think  
9 people don't fully appreciate.

10 So much time was spent last year working and worrying  
11 about, as they should have, the financial sector and the  
12 systemic failures in that sector, that I don't think people  
13 fully appreciated the systemic collapse in this sector and what  
14 the implication of that was for companies across -- and  
15 governments and communities across the country. I think you  
16 only have to think about some of the objections Your Honor  
17 dealt with yesterday, when we were talking about how long we'd  
18 make payments to certain taxing authorities and others; and  
19 that brought them here from their locales to be concerned about  
20 payments being made; how about no payments being made, because  
21 of just a complete collapse of major companies.

22 That brings us, at the end, to the beginning of this  
23 year, after we understood that there was at least an  
24 opportunity for there to be some funding, because there was no  
25 funding in the capital markets available to address this. And

1 that really led to a series of discussions the company had and  
2 presentations that our stakeholders now have, because we've  
3 dealt with them over the last number of months. But it was in  
4 January where the company developed a deal structure that  
5 included the sale of certain sites to General Motors. And this  
6 was a structure that the company came up with.

7 So much has been said about how different parties  
8 tried to force the debtors to do different things. And the  
9 fact is, while this has been a hotly negotiated and hotly  
10 contested and difficult process, it has been more of a  
11 collaborative process, I think, than people publically, at  
12 least, understand. And it was the company who came up with the  
13 deal structure back in late January that said we should sell  
14 some key sites to General Motors and then figure out how we can  
15 move forward with the transaction that was fundamentally  
16 supported by our DIP lenders through a conversion of capital.

17 When we did that, we identified a few issues that had  
18 to be resolved. This chart here, number 21, basically  
19 indicated that, look, we've got a very tight time frame to deal  
20 with our issues. Your Honor, I think will remember, we had a  
21 chambers conference with most of the major players here in  
22 January where we described the issues we were trying to solve,  
23 and we had an accommodation agreement that said that it needed  
24 to be solved in February. And Your Honor gave advice to all of  
25 us, saying you better figure out whether you can find ways to

1 work with each other over a slightly longer period of time, and  
2 that obviously, is what we all ended up having to do.

3 But we had to sort out emergence funding, pension,  
4 solutions, and we had to figure out our relationship with  
5 General Motors. On Chart 22, this next chart, there were just  
6 a wide variety of subjects that had to be reviewed and  
7 considered and ultimately, now, are part of the master  
8 disposition agreement and related agreements; all of these  
9 issues, which had to be renegotiated for the second, third,  
10 fourth time, with General Motors. And again, people can choose  
11 to -- and somehow in their papers are being highly critical of  
12 General Motors Company. And I believe that company, like all  
13 of us, all of our clients do, and everyone in this case does,  
14 they take actions that are in their own best interests. But  
15 they also try to figure out how to merge those best interests  
16 and find points of common ground.

17 And this debtor, over the last eighteen months, has  
18 gone back almost three times, just about three times to GM and  
19 said the answer you gave us on this issue or that issue or the  
20 other issue, which was okay four months ago, just isn't okay  
21 anymore. And we need to think about it again. A very complex  
22 series of discussions.

23 That also led to some stark realities, which are  
24 distributed or highlighted on Chart 23, which is, we came to  
25 understand in January that in order for us to be able to

1 finance plan modifications, there were only certain buckets of  
2 financing or capital that would be available to us. Trying to  
3 get some financial support from our Tranche A and B lenders was  
4 one area that we explored. At the far end of that, we  
5 indicated in the green box, we needed to resolve administrative  
6 claims and DIP lender claims through cash, rollover debt, and  
7 conversion to equity. Sitting down and talking to your DIP  
8 lenders, even those lenders who had, in some respects, been  
9 converted from prepetition debt, that you expect them to  
10 finance the company through equity contributions as they don't  
11 get paid back what they were expecting, is a difficult  
12 conversation. And the fact that we're here on a consensual  
13 basis through a pure credit bid to accomplish that, I think  
14 really exemplifies the process that all of us worked closely  
15 together on.

16 Other sources of funding were GM paying and assuming  
17 making more payments and assuming more liabilities; some  
18 support from the U.S. Treasury, directly or indirectly. We all  
19 understand now that the Treasury chose not to directly support  
20 the automotive supply group, but we did get, and this  
21 transaction does involve a significant amount of funding from  
22 General Motors, and it was part of the solutions that General  
23 Motors Company dealt with in its transactions.

24 And then, obviously, the plan investor litigation  
25 proceeds. That matter is still pending in the court. Whether

1 there will be proceeds or not from that through settlement or  
2 otherwise, is to be determined. And the parties had to come to  
3 some agreement about how to address those issues.

4 And then finally, something that I think it's  
5 important that we all talk about, which is the third leg of the  
6 stool, was pension. I said yesterday that one of the things  
7 the company had preferred from the beginning was a consensual  
8 arrangement that would address pensions. We wanted to try to  
9 preserve that which had been accomplished back under the  
10 confirmed plan and chose to do that. Our preferred route was  
11 trying to reach an agreement with GM to assume the hourly and  
12 salaried pension assets and liabilities. There were some  
13 avenues to think about that. But obviously, GM had its own  
14 Chapter 11 case and the realities of its own situation to deal  
15 with, and that no longer became possible. I think there's been  
16 a fair amount of criticism of General Motors about those  
17 determinations, and I'm not here to either add or detract from  
18 that debate. But I am here to add some reality to it, and  
19 again say on this record, that GM, after having taken the first  
20 414(L) transfer, had no further obligations to Delphi to do  
21 anything beyond what it had done.

22 And that was because we could not meet all the  
23 conditions to the agreements we'd entered into with them. And  
24 so while it was our preferred route, for reasons that were  
25 outside of our control, we weren't able to accomplish that.



1 And therefore we recognized that there had to be a negotiated  
2 transaction with the PBGC that would resolve from the GM side,  
3 their benefit guarantee issues, resolve their follow-on plan  
4 issues, because those had been alleged -- that's all public,  
5 those statements have been filed publically by the PBGC -- and  
6 release PBGC asserted liens on Delphi's nondebtor assets.

7 These are things that we had hotly contested as to  
8 whether those liens are actually valid. But that didn't change  
9 the fact that they had to be resolved consensually. And the  
10 PBGC-Delphi settlement agreement with Delphi resolved that  
11 latter point yesterday, among others.

12 All of those things were contemplated in January and  
13 February of this year, as we worked with each other to try to  
14 figure out how to solve that problem. As we moved into more  
15 recent months, there were just a few other -- two other, maybe  
16 three other memorable events to us. One of them was the period  
17 at the end of March, beginning of April. Very significant for  
18 us in these reorganization cases.

19 As Your Honor knows, the Auto Task Force intervened in  
20 this cases, on March 23rd, to block agreements that Delphi had  
21 reached with General Motors, which was their right, because  
22 they were the lender to General Motors at the time, and they'd  
23 retained that right. And that led to a series of conversations  
24 involving directly and indirectly and in different groups, the  
25 company, the Auto Task Force, General Motors, the creditors'

1 committee and the DIP representatives of the DIP lenders. And  
2 it led to some very tough discussion and decisions in the first  
3 week of April, when the General Motors and the Auto Task Force  
4 took the view that they were not interested in supporting, at  
5 that point, Delphi's emergence, but rather wanted to acquire  
6 some assets on a liquidation basis, for fair value, but at  
7 least I read fair value at the time to be at liquidation  
8 values.

9 And our DIP lenders called us and indicated they felt,  
10 under the circumstances that then existed, they would not  
11 provide additional interim or emergence funding for Delphi, and  
12 weren't prepared to enter into transactions with us; and that  
13 really the route that the company ought to take was a route to  
14 liquidate itself through some form of self-financed  
15 liquidation.

16 That was a very tough week for the company, probably  
17 one of the toughest weeks the company's had in this entire  
18 reorganization process. It was also, in my mind, in that week  
19 and the weeks after that, a textbook, in my view at least,  
20 textbook case of corporate governance and how it should work.  
21 The directors met for many occasions at that time, and  
22 ultimately concluded with management that they did not believe  
23 that that approach was value maximizing, and that the company  
24 had to figure out what an alternative would be that might work.

25 That led to a series of discussions, a lot of tenacity

1 and persistence by the company management, on trying to push  
2 its stakeholders towards a reorganization. And that really led  
3 to meetings in May, which is the next group of events. There  
4 was a series of events from May 12th to June 1st, kind of the  
5 sixth major area, in which the company met with the Auto Task  
6 Force, with our stakeholders, and basically set down  
7 principles. We were asked by our stakeholders: what does  
8 Delphi want? What would Delphi do? What are Delphi's  
9 objectives? How, with all these problems going on, what do you  
10 want us to take into consideration? And the task force had set  
11 out its own objectives in terms of what it wanted for General  
12 Motors and General Motors wanted for General Motors.

13 And we sat down with the parties and talked about  
14 these objectives. I'm not going to go through them at length.  
15 You've heard testimony or read testimony about them. But this  
16 document of the -- set forth here, in terms of the  
17 objectives -- and I'm just going to deal with Chart 17 here --  
18 those objectives were the objectives that guided everything the  
19 company did from then until now.

20 At that time, the company ended up providing the  
21 hypothetical liquidation analysis to its stakeholders that Your  
22 Honor has seen. It provided analysis of administrative  
23 liabilities. It indicated that this needed to be resolved  
24 through a plan; that we needed to sort these transactions out.  
25 And ultimately, faced with the prospect of that, the lenders

1 were not then prepared to enter into a transaction with Delphi.  
2 Delphi needed to find someone who would.

3 And we worked with a number of different companies to  
4 come to that conclusion, ultimately filing the transaction we  
5 filed on June 1st, but not before engaging in some twenty hours  
6 of judicial mediation, requested by the DIP lenders, with Judge  
7 Morris, whom Your Honor appointed, who really, as we all look  
8 back and reflect, many of the kernels of the solutions that we  
9 all talked about today, were in fact, dealt with in that  
10 mediation. And so we moved forward. And we solved -- we've  
11 tried to solve those problems, and maintained a desire to  
12 fulfill those objectives.

13 That really brings us to the June 1st transaction,  
14 which was the best transaction the company could come up with,  
15 assuming all of the things we had been told in April and May  
16 were, in fact, true. And they were true at the time. But one  
17 of the things that I think people needed to see was that there  
18 was a solution other than liquidation that was feasible. And  
19 the company was able to put forth that in June. And then, in  
20 the last six weeks, what we've really seen, is our  
21 stakeholders, those to whom we owe a fiduciary duty, come to  
22 the company and say, you've demonstrated a way to be able to  
23 move forward with this transaction. You've found a solution  
24 that is better than liquidation, and we want it. And that's  
25 something that we worked with very carefully.

1           So let's move to Chart 30 ,if we could? And again, I  
2       show this chart only to Your Honor for a little bit of levity  
3       in these closing remarks, because this was the -- there were  
4       five or six versions of this chart. We spent time trying to  
5       sort out how it was that we would execute this transaction in a  
6       manner that was consistent with the requirements of the  
7       Bankruptcy Code, Uniform Commercial Code, and our various  
8       agreements that we're involved with. And this is really the  
9       transaction, the form of which was in our supplement. This has  
10      been adjusted differently.

11           The levity part of this is to tell you that Mr.  
12      Sheehan had indicated to me that if Your Honor ever required  
13      that he testify about this, he was going to bring up all the  
14      advisors, because he was unwilling to sort of have to walk  
15      through all these steps. But this, in fact, the transaction  
16      we're doing. And we wanted to give some degree of transparency  
17      as to the pure credit bid and how it operates. And this is the  
18      chart that does that.

19           And on Chart 31 it addresses all of the claims in the  
20      waterfall, postpetition and prepetition, in a manner that is  
21      consistent with the Bankruptcy Code and addresses those various  
22      categories in a manner that has been accepted by our DIP  
23      lenders, by other administrative creditors, and provides the  
24      opportunity for recovery for holders of some of our prepetition  
25      liabilities.

1 I think this is a transaction that is, I think,  
2 remarkable in that respect, that while the opportunity to  
3 really reap the benefits of the future profits of this company  
4 is something that our DIP lenders have taken on and will enjoy  
5 those benefits as we move forward, the fact of the matter is,  
6 they had to give up their expectations to be repaid in cash as  
7 DIP lenders, by and large, and they had to agree that they  
8 would address all of the various boxes on this waterfall, as  
9 did General Motors. And they did that, and that is what this  
10 plan is about.

11 As we have indicated, Your Honor, and again, you've  
12 seen these before, and I'm not going to dwell on these either,  
13 Charts 32 and 33 indicate how the assets and liabilities are  
14 being allocated. These are updated from what was in the  
15 supplement. And in the final transaction, as we have GM  
16 Components Holding LLC, Reorganized DPH Holding Company, and  
17 what's now called DIP Holdco 3 LLC, although Mr. Bernstein's  
18 colleagues promised me they'll come up with a better name for  
19 that before we close. But that's the current legal name of  
20 that holding company which currently exists.

21 Last, in just terms of trying to assess the -- to go  
22 through the assessment the company has gone through over the  
23 last number of weeks and in connection with the auction, I  
24 would just point to Chart 37, if I can, as the qualitative  
25 factors -- or excuse me, the quantitative factors, and then the

1 qualitative factors that led to the board of directors'  
2 recommendations to Your Honor. This is an assessment of the  
3 consideration to the estate that was existing under the  
4 Platinum GM MDA.

5 And as Your Honor knows, we believe that there was a  
6 range of between 5.4 to 5.67 billion dollars, was the value of  
7 that transaction. Quantitatively, when the pure credit bid  
8 came in, as Your Honor knows, because you instructed us,  
9 quantitatively, the company was able to only count  
10 quantitatively the 3.44 billion, roughly, that was  
11 consideration to the estate in connection with the transaction,  
12 that was a reduction in secured debt. That's how pure credit  
13 bids work.

14 However, our lenders, we spent time with the lenders  
15 giving them advice and counsel and guidance as they considered  
16 their bids, as we had with the Platinum and GM parties, and had  
17 encouraged them to try to mirror the transaction that had been  
18 put together as the transaction of preference on June 1st. And  
19 to their credit, they agreed to do that. And that is why  
20 what's before the Court is essentially the master disposition  
21 agreement that had been put before the Court on June 1st, with  
22 amendments that were agreed to between the parties. But it's  
23 the same basic structure, and we're seeking to execute this  
24 through a confirmed plan.

25 And even though the pure credit bid, quantitatively,

1 had to be limited to 3.4 billion, because of the way your order  
2 is read, that's what they had to say to us -- the  
3 administrative agent had to say please don't consider more than  
4 that, the company did faithfully look at that and follow Your  
5 Honor's instruction; we also recognized that all of the other  
6 major attributes, quantitatively, of the pure credit bid, exist  
7 in the pure credit bid, so that even though we couldn't add  
8 them up and say they are there, the fact is they were there.

9 What really led to the business judgment that's before  
10 the Court today are the qualitative factors. And these go back  
11 to the objectives that the company had sat down with the  
12 government, General Motors, DIP lenders, the creditors'  
13 committee and the other stakeholders back in early May and  
14 said, these are things that we need to consider. These are the  
15 objectives we have and the factors that we think make sense.  
16 And they were simple, but they were important.

17 We needed to maximize business enterprise value and  
18 related recoveries for stakeholders. We needed to assess the  
19 ability to perform the obligations under the transaction  
20 documents. We wanted the operations of the business to  
21 continue on a going-concern basis. We needed to evaluate the  
22 ability to achieve that. We needed to look at speed of  
23 consummation of the agreement and the certainty of  
24 consummation. We wanted to consummate through a plan to  
25 achieve comprehensive resolutions of these cases. And as



1 importantly, we needed to have a sufficient liquidity runway  
2 toward substantial consummation of the modified plan.

3 As you can see, the pure credit bid meets all of these  
4 factors. And the original MDA meets only certain of the  
5 factors. And the gating issue between those two, obviously, is  
6 that the parties behind the pure credit bid also happen to be  
7 the DIP lenders, and their opposition to the MDA, if they were  
8 not able to be the sponsors of the MDA, simply affected the  
9 qualitative balance as I think should be of no surprise to  
10 anyone.

11 And so, Your Honor, we've moved through what's been a  
12 very dynamic eighteen months or so, as we have gone from the  
13 last confirmation hearing to this plan modification hearing. I  
14 think these comments are intended just simply to provide some  
15 perspective in this record about the six or seven sort of  
16 moments of truth that the company had to deal with over the  
17 last eighteen months and the way in which it navigated through  
18 them.

19 With that, Your Honor, from the company's perspective,  
20 and subject to the submission of the final form of order, the  
21 company would ask Your Honor to approve the plan modification  
22 motion as presented to the Court.

23 THE COURT: Okay. Does anyone else have anything to  
24 say?

25 MR. SIEGEL: Good afternoon, Your Honor. Glenn Siegel

1 on behalf of the Elliot Associates entities.

2 THE COURT: Good afternoon.

3 MR. SIEGEL: The proposed plan modification which  
4 approves the sale of the debtors' assets after an open sales  
5 process, reconciles the rights of creditors with the needs of  
6 two very important parts of the United States auto industry.  
7 The closing of the pure credit bid, the transaction proposed in  
8 the pure credit bid, would lead to the infusion by DIP lenders,  
9 of almost 900 million dollars of committed capital to New  
10 Delphi, as well as substantial participation and financial  
11 assistance by General Motors.

12 We believe that this sale, if approved, will send  
13 Delphi on its way to recovery as a successful business  
14 enterprise and urge the Court to approve the transaction.  
15 Thank you.

16 THE COURT: Okay. Thank you. Okay. I will grant the  
17 debtors' motion for modification of the plan and approval of  
18 the relevant agreements, i.e., the agreement with GM and the  
19 DIP lender entity. It's clear from the evidence as summarized  
20 by Mr. Butler, that the plan satisfies the good faith  
21 requirement of 1129(a)(3), both in terms of the narrow view of  
22 that section, which focuses on good faith in proposing and  
23 seeking approval of the amendment or modification, and also in  
24 terms of a broader view of good faith.

25 The debtors were obviously presented with a colossal

1 problem when the effective date of the plan didn't occur upon  
2 the refusal of most of the plan investors to close in April of  
3 2008. That problem was very clearly exacerbated by a series of  
4 remarkable events over the following months, that involved both  
5 frightening turmoil in the capital markets as well as  
6 unprecedented difficulty in the debtors' industry, the auto  
7 industry, and in particular, the travails of its largest  
8 customer and likely source of substantial funding for the plan,  
9 GM Corporation.

10 Nevertheless, it is clear to me that the debtors, led  
11 by an extremely active board, but also through the work of all  
12 of their employees, consistently addressed these problems in a  
13 responsible and good-faith manner, which culminated,  
14 notwithstanding, as Mr. Butler said, the fact that their  
15 debtor-in-possession loan facility matured seven months ago  
16 without a replacement, in an auction process that resulted, I  
17 believe fairly, in the choice of a winning combined bid that  
18 I'm approving today.

19 The plan, I believe, as modified, meets the  
20 requirements of 1127, in particular, although I won't go  
21 through all of those requirements, I believe that the debtors'  
22 properly sought voting on that plan modification, and that the  
23 debtors classified the voting classes properly, including  
24 specifically, separately classifying the PBGC, given the  
25 complex issues with regard to the PBGC's claims that were

1 presented, i.e., the unsecured nonpriority, priority, and  
2 asserted secured claims by the PBGC.

3 I also conclude, as I did with the original plan, and  
4 as supported by FTI's analysis, that the plan properly provides  
5 for plan purposes, a substantive consolidation. I also find,  
6 based upon not only the affidavits that were submitted, but the  
7 fact of the auction process itself and the plain terms of the  
8 plan modification, that the plan may be crammed down on  
9 dissenting classes.

10 I'd note further that with the exception of the two  
11 objections by taxing authorities, in respect of the treatment  
12 of their secured claims, there has been no objection to cram  
13 down that's been pursued since the announcement of the winning  
14 bid of the settlement with the unsecured creditors' committee  
15 and Wilmington Trust.

16 The most difficult issue for me, as well as I believe  
17 for the creditors of these debtors, was the issue that usually  
18 doesn't matter in connection with a Chapter 11 plan that's  
19 being pursued in good faith, which is the 1129(a)(7) best  
20 interest analysis, which compares a liquidation to the  
21 reorganization plan. That's because of the unique  
22 circumstances of this case. It was asserted in plan objections  
23 and I'm sure in negotiations that because of the unique role  
24 that these debtors play in the auto industry, and in particular  
25 for GM, that these debtors may be worth more, at least with the

1 threat of liquidation, which conceivably could inspire  
2 additional contributions by GM and perhaps others to the  
3 creditors than if the debtors continued to operate.

4 Obviously the debtors play a major and critical role  
5 in the auto industry. But I am satisfied that the debtors made  
6 the correct decision not to push that threat beyond the extent  
7 that it was pushed in this case. And that includes, as I'm  
8 sure the debtors understood, the fact that it would be pushed  
9 further by the creditors before resolution. Particularly given  
10 the difficulties that the industry faces and therefore the  
11 necessary support by the U.S. government, any such threat, the  
12 outcome of which would be -- or the goal of which would be  
13 destructive of the rest of the auto industry, or at least of  
14 significant sectors of it in the U.S., was a threat that would  
15 likely elicit very unpredictable responses, including from  
16 those in Congress and in the administration who, I'm sure, do  
17 not respond well to such threats.

18 So, it seems to me, that while recognizing the  
19 dynamics of their particular role in the auto industry, not  
20 only the debtors but the DIP lenders have properly mediated or  
21 moderated the urge to obtain the last dollar through a  
22 destruction by proposing what's on the table today.

23 Finally, I conclude that therefore the 1129(a)(7) test  
24 is satisfied, that is, if the debtors in fact did liquidate, I  
25 believe that Mr. Eisenberg's analysis is reasonable and proper,

1 and that it would be imprudent to assume that the one ultimate  
2 source of financing that is available beyond what's on the  
3 table, i.e., the U.S. government, would have responded to such  
4 a threat in a way that would have increased the values from  
5 those set forth in Mr. Eisenberg's analysis.

6 I also find, consistent with my previous remarks, that  
7 the plan is feasible. It does represent and include a very  
8 significant commitment to continue funding by the two primary  
9 DIP lenders, Elliot Associates and Silver Point, as well as by  
10 GM, and also reflects, I believe, a realistic analysis, as set  
11 forth in the declarations filed in support of the modification,  
12 with regard to the other assets retained by the reorganized  
13 debtor.

14 Obviously, the goal of this transaction is to have a  
15 feasible and continuing business preserved as a going concern,  
16 and I believe that will occur through this transaction. I also  
17 believe that those who are acquiring the assets will acquire  
18 them free and clear, to the fullest extent contemplated, not  
19 only by the recent rulings in the Chrysler and GM cases, but  
20 also going back to the TWA and Leckie Coal cases, and while I  
21 haven't seen the ultimate version of the order, I believe my  
22 ruling will be consistent with what I've seen on that score.

23 So, I will approve confirmation of the plan as  
24 modified.

25 MR. BUTLER: Thank you very much, Your Honor.

1 THE COURT: Do you have the order now?

2 MR. SIEGEL: We are very hopeful of having the order  
3 shortly.

4 THE COURT: Okay.

5 MR. SIEGEL: If we can take a break and see --

6 THE COURT: That's fine.

7 MR. SIEGEL: -- if we can achieve that.

8 THE COURT: I'm going to have lunch, so if that's all  
9 right? Unless the break is going to be like ten minutes, I'll  
10 wait. Otherwise, I'll eat lunch.

11 MR. SIEGEL: I wouldn't want to unnecessary delay your  
12 lunch.

13 THE COURT: All right.

14 MR. BUTLER: Thanks, Judge.

15 MR. SIEGEL: Thank you, Judge.

16 (Recess from 1:18 p.m. to 4:25 p.m.)

17 THE COURT: Please be seated. Okay. We're back on  
18 the record in Delphi Corporation. The parties have given me a  
19 black-lined order approving the plan modifications and related  
20 agreements, and I've been through it. They're not extensive  
21 changes. But I did have a few points on the order that this  
22 supersedes. And I think these changes only address one of  
23 those. So I thought I'd go through them with you and make sure  
24 we're all on the same page with this order. So I apologize for  
25 this. My mark-up is on the penultimate version of this, so

1 I'll refer to the paragraphs.

2 On page 33, paragraph DD, there's a reference to --

3 MR. BUTLER: I'm sorry, Your Honor, I just need to  
4 find it --

5 THE COURT: Sure.

6 MR. BUTLER: -- because unfortunately --

7 THE COURT: It's paragraph DD.

8 (Pause)

9 MR. BUTLER: Paragraph DD. I see it, Your Honor.

10 THE COURT: Okay. There's -- this is the first  
11 time -- well, there's a reference to the contracts and leases  
12 that are being assumed by the debtors or the buyers, pursuant  
13 to the modified plan of the MDA documents. That's then defined  
14 as the assumed contracts and leases. And then there are  
15 provisions starting at page 58 and going on, dealing with the  
16 assumed contracts and leases. And some of them, obviously, are  
17 not -- some of them are being assumed later, after August 17th,  
18 if they're to be assumed. I just wanted to make sure you've  
19 gone through it -- I think you have -- and made sure that I'm  
20 not, because of this defined term, directing the assumption or  
21 authorizing the assumption and assignment of those through this  
22 order. I don't think that's the case, but I would ask someone  
23 to check that. Because the defined term is very broad.

24 MR. BUTLER: I think, Your Honor, the answer -- the  
25 way I think we can do it, I think the parties acknowledge that



1 the findings you're making today with respect to adequate  
2 assurance and the assumed contracts and leases, is subject to  
3 the resolution of objections that have been made that are  
4 scheduled for the August 17th hearing.

5 THE COURT: Okay.

6 MR. BUTLER: I think all the parties would agree with  
7 that. I'm looking for --

8 THE COURT: Okay. That's another way to do it. I  
9 mean, I know that's the intent. I just wanted to make sure  
10 that --

11 MR. BUTLER: Mr. Siegel, can we all agree with that?  
12 So I think, what I would suggest is that in paragraph DD we  
13 simply say, "subject to the Court's resolution of objections to  
14 be heard at the August 17th hearing," or something like that.

15 THE COURT: Okay. That's fine.

16 MR. BUTLER: So.

17 THE COURT: Okay. And then, you guys have dealt with  
18 this, I see. Paragraph 3, which is on page 41 of the prior  
19 draft, says that the MDA that was submitted on July 26th will  
20 be the governing one. And now you've added, the fully signed  
21 one.

22 MR. BUTLER: Correct. Unless superseded by the filing  
23 of an executed version.

24 THE COURT: That's fine. But that's going to be  
25 subject, of course, to the material modification provisions

1 that --

2 MR. BUTLER: Yes. Your Honor, the fully executed  
3 version is only intended to carry forward all of the comments  
4 over the course of the last couple of days. It just hasn't  
5 been -- that's what the final form and signed.

6 THE COURT: That's fine. Then the next page. This  
7 is, I guess, the most substantive comment I have. This is --  
8 the proviso at the end of paragraph 4, which says, "provided,  
9 however, that after the occurrence of the effective date, if  
10 this order is revoked then the MOU's," I'm sorry, "then the MDA  
11 and the related transactions shall be severable from this order  
12 and be deemed approved." And at least, based on the record of  
13 the hearing, I mean, I don't think that's what I've done. I  
14 haven't approved any sale, right?

15 MR. ABRAMS: This order is revoked and --

16 THE COURT: Right. But I just think that should come  
17 out, that proviso should come out. I mean, the unions reserved  
18 their objections under 363. The creditors had been --

19 MR. SIEGEL: Your Honor, I think -- I'm pretty sure I  
20 know what the Court's referring to.

21 MR. ABRAMS: Here it is. Right here.

22 MR. BUTLER: The point here is that this is a -- these  
23 transactions are sales that are occurring under this plan. And  
24 what we must be assured of is that if, in fact, for whatever  
25 reason the confirmation order is no longer effective, there is

1 no ability for those sales -- to sort of unscramble the egg and  
2 say that the sales, in fact, did not occur, and that --

3 THE COURT: Well, there's a separate 363(m) and (n)  
4 finding elsewhere. And I think that's sufficient for you all.  
5 I just -- this seems to be going beyond that and having like a  
6 separate approval of your 363.

7 MR. ABRAMS: I was thinking of -- that's fine, Your  
8 Honor. I'm sorry, Your Honor.

9 THE COURT: Okay. That's fine.

10 MR. BUTLER: Your Honor, just so I'm clear. The last  
11 sentence of paragraph 4 would remain in? Is that correct?

12 THE COURT: Yes. It's this proviso part --

13 MR. BUTLER: Right.

14 THE COURT: -- the "provided however" language.

15 MR. BUTLER: Yes.

16 THE COURT: So the 363(m) protection is still --

17 MR. BUTLER: Yes.

18 THE COURT: -- is still there.

19 MR. BUTLER: The last sentence would stay in?

20 THE COURT: Right. It's the proviso that would come  
21 out. Okay?

22 MR. BUTLER: Okay.

23 THE COURT: On the next page, paragraph 9 and 10, I  
24 think you've left out some language. I think it's just kind  
25 of -- it doesn't make sense to me. It says, "Pursuant to the

1 terms of the MDA documents, Sections 363 and 1123(a)(5) of the  
2 Bankruptcy Code as applicable in this order, on the effective  
3 date the debtor shall consummate the transfer free and clear of  
4 any claims liens and encumbrances, pursuant to the terms of the  
5 MDA documents of this order, to the purchasing entities of the  
6 acquired assets, the sales securities, the assumed contracts,"  
7 and then I think this is where language is missing, "the  
8 assumed liabilities and any other liabilities specifically  
9 assumed under the MDA or assumed and assigned pursuant to  
10 paragraphs 38 and 61, in accordance with the MDA documents."

11 Are you really saying you're going to transfer -- this  
12 is free and clear. So I think what you're saying is, it's free  
13 and clear, except for the assumed liabilities etcetera. I  
14 think that language is just left out.

15 MR. BUTLER: Right.

16 THE COURT: And then it is in the next paragraph. So  
17 I think maybe you just bring it up. Because the next paragraph  
18 would say it again. But then I think it says, "And the DIP  
19 agent shall have no liability." Anyway, I think that's okay.  
20 I just think that language before, "and the DIP agent shall  
21 have no liability," should also be in front of "assumed  
22 liabilities" in the prior paragraph.

23 And then because everyone wants to have this "free and  
24 clear" language about six or seven times in the order, there  
25 are a couple of places where -- and one of them is in 11(b) and

1 11(a); 11(a) says, "except with respect to assumed liabilities,  
2 permitted encumbrances"; 11(b) says, "except with respect to  
3 assumed liabilities" and leaves out permitted encumbrances.  
4 And both of them leave out this other language about any other  
5 liabilities specifically assumed under the MDA or assumed and  
6 assigned pursuant to paragraphs 38, 39, 61. And I think if  
7 you're going to have -- if you're going to say it several  
8 places, you ought to say it the same place each time as far as  
9 what's the carve-out from the free and clear. I think that's  
10 just in 11(a) and (b). I think that's the only place it comes  
11 up is 11(a) and (b).

12 In paragraph 17, towards the bottom of 51, it says  
13 that "the retained property will revert in the reorganized  
14 debtor that owns such property or interest in property as of  
15 the effective date, free and clear of all claims, liens,  
16 charges, encumbrances, rights and interests of creditors and  
17 interest holders." I've added here, because I think this is  
18 right, "except as provided in the modified plan." Because  
19 there's some -- I mean, some people are -- the secured  
20 creditors are retaining their liens on their collateral. The  
21 taxing authorities are retaining their liens. So I've added  
22 that language.

23 MR. BUTLER: Okay.

24 THE COURT: I think that's right. And then, paragraph  
25 20, there's a proviso at the end of it which says, "provided,

1       however, notwithstanding anything in this order, the  
2       exculpation provisions or releases provided pursuant to Article  
3       XI shall no have no effect on the liability of any entity that  
4       otherwise would result from any action or omission, to the  
5       extent that such action or omission is determined in a final  
6       order to have constituted intentional fraud or willful  
7       misconduct." One of those provisions in the plan also includes  
8       gross negligence. So the intention of this paragraph was to  
9       limit the scope of those releases so that they wouldn't include  
10      intentional fraud or willful misconduct --

11               MR. BUTLER: Yes.

12               THE COURT: -- but one of them actually broadens the  
13      release, insofar as -- I forget the provision. I'll find it.

14               MR. BUTLER: Your Honor, I think, actually the way  
15      this is written, it doesn't change what's in the plan. It just  
16      simply --

17               THE COURT: Well, no, but it does, I think, because it  
18      said notwithstanding anything --

19               MR. BUTLER: In this order and not --

20               THE COURT: -- no, in the plan. Notwithstanding  
21      anything in this order -- well maybe that's right. You're  
22      right. I mean, that's true. Because this order doesn't repeat  
23      all of the releases --

24               MR. BUTLER: No, it does not, Your Honor.

25               THE COURT: -- you're right. You're right. Oh, yes.

1 The last comment I had -- well, actually, the next to last  
2 comment, I'm sorry. On page 75, paragraph 47 -- I'm sorry,  
3 paragraph 46, there's a similar provision in 47, sets up a bar  
4 date for substantial contribution claims and other  
5 administrative claims. And each time it gives the date as  
6 running after the effective date. In one case it's forty-five  
7 days after; and in the other it's thirty days after. I've just  
8 put in that it's on or before the forty-fifth day after notice  
9 of the effective date is filed on the docket.

10 And then, I had a question on 47. Didn't we set up a  
11 separate other administrative claims bar date? Isn't there a  
12 separate one already in place?

13 MR. BUTLER: Yes. This is a supplemental bar date for  
14 claims prior -- running from June 1st -- I believe it's June 1,  
15 2009 forward. The prior bar date ran out on May 31st. So this  
16 would just be for -- and I think that's as it's -- that was the  
17 intention, Your Honor.

18 THE COURT: Okay. So that's the parenthetical, "other  
19 than as set forth in the modified plan"?

20 MR. BUTLER: Correct. Yes. But it's to cover  
21 administrative claims incurred on and after June 1st.

22 THE COURT: I think, since people will be reading  
23 this --

24 MR. BUTLER: Right.

25 THE COURT: -- you might want to put, then, "i.e.,

1 other than for claims arising after June 1st or May 31st."

2 MS. CECCOTTI: Your Honor, while we're on this,  
3 actually, I just focused on this, if I could just ask a  
4 clarifying question? Would the same exclusion -- there were a  
5 bunch of exclusions to the administrative bar date --

6 THE COURT: Right.

7 MS. CECCOTTI: -- that Mr. Butler had just mentioned.  
8 Are they going to apply, as well, I guess, would be the  
9 question? It would seem like they would have to be, if all  
10 you're doing is carrying it forward. Have we made that clear  
11 anywhere? There's an exclusion for employee claims. There's  
12 an exclusion for goods and services; that sort of thing. I  
13 just wanted to make sure, if we're carrying it forward, that  
14 it's --

15 MR. BUTLER: I'll ask the people who were working on  
16 this.

17 MS. CECCOTTI: -- we understand.

18 THE COURT: Well, there was this term "other  
19 administrative claim."

20 MR. BUTLER: I think there was a definition. I don't  
21 know that it was -- I think there was a definition that was  
22 carried forward.

23 THE COURT: Well, this just says "administrative  
24 claim"?

25 MR. BUTLER: Yes.



1 THE COURT: This says -- if the definition of -- well,  
2 I think the bar date used the term "other administrative  
3 claim."

4 MR. BUTLER: Correct. And this does too, as well -- I  
5 think --

6 THE COURT: No, this one just says, "All requests for  
7 payment of an administrative claim." The heading says "Other  
8 administrative claims" --

9 MR. BUTLER: Right.

10 THE COURT: -- but so maybe we should add the word  
11 "other" before "administrative" to make that work.

12 MR. BUTLER: All right. But I think there was  
13 actually an administrative claim request form -- there was a  
14 form of this claim attached to the modified plan at Exhibit  
15 10.5, I believe. So I think the form -- to Ms. Ceccotti's  
16 point, I think the form is already part of the plan. I'd have  
17 to go back and look. I don't have it in front of me here.

18 THE COURT: But I think it would be --

19 MS. CECCOTTI: That may be, but I'm not sure it  
20 answers my question. Because it would just be the form, not  
21 the -- unless you're saying the form includes the instructions  
22 which would also incorporate the --

23 THE COURT: Well, there's this defined term, "other  
24 administrative claims".

25 MR. BUTLER: Right.

1 THE COURT: But I think you should put the word  
2 "other" in, in front of "administrative claims."

3 MR. BUTLER: Okay. I need a moment, Your Honor.

4 THE COURT: Okay.

5 MR. BUTLER: Because I didn't realize that Ms.  
6 Ceccotti was going to raise this.

7 MS. CECCOTTI: Well, I didn't either.

8 MR. BUTLER: But this paragraph hasn't changed, and --

9 THE COURT: It's a good point, though.

10 MR. BUTLER: -- I would have expected it, frankly, for  
11 the final administrative expense claim to be broader not less  
12 broad. Because the estate needs finality on administrative  
13 expense claims.

14 THE COURT: All right. But you're not going to  
15 have -- but there's certain exclude -- ordinary course you're  
16 not going to have --

17 MR. BUTLER: No, we're not having ordinary course.  
18 And I think that's included in the form of the -- in 10.5,  
19 which everyone's reviewed. I just don't have it sitting here  
20 in front of me.

21 THE COURT: But the definition of administrative claim  
22 in the plan covers everything, I think. Right?

23 MR. BUTLER: I'll take just a minute, Your Honor. I  
24 just don't have it.

25 (Pause)

1 THE COURT: Actually, the plan provision -- there's a  
2 definition of administrative claims bar date in the plan.

3 MR. BUTLER: Right.

4 THE COURT: So this is consistent with that.

5 MR. BUTLER: Right. I'm looking at 10.5 as well, Your  
6 Honor --

7 THE COURT: Yes.

8 MR. BUTLER: -- which spells it out. I think it's  
9 fine.

10 THE COURT: Okay. All right. You could, I guess,  
11 confirm separately with the UAW as to whether they have to file  
12 a claim or not.

13 MS. CECCOTTI: That's fine with us.

14 THE COURT: But, yes, the definition of administrative  
15 claim is part of it, so that's fine. Okay. The last comment I  
16 had was on the PBGC settlement, page 81 paragraph 60. The  
17 third sentence there says, "All parties are authorized to enter  
18 into such other documentation," and consistent with my ruling  
19 yesterday, I'm not really authorizing the PBGC to enter into  
20 anything. So --

21 MR. BUTLER: It's the debtors.

22 THE COURT: -- so I've said -- I've just made this one  
23 sentence. So it says, "The debtors are authorized but not  
24 directed to enter into the Delphi PBGC settlement agreement for  
25 and in accordance with its terms, including to enter into or

1 cause the entry into such other documentation as may be  
2 reasonably necessary," etcetera.

3 MR. BUTLER: Understood, Your Honor.

4 THE COURT: And then I don't think this was the  
5 intention, but just to make it clear, the last sentence says,  
6 "Upon the effectiveness of the Delphi PBGC settlement  
7 agreement, all liabilities relating to unpaid contributions to  
8 the pensions plans, shall be released or discharged." And I've  
9 added "as set forth therein" so it's not sort of a general  
10 discharge.

11 MR. BUTLER: Okay. Yes, Your Honor.

12 THE COURT: So, subject to having those changes made,  
13 I am prepared to enter the order that was handed to me in  
14 black-line form. I didn't have any issues with the changes  
15 made in the black-line.

16 MR. BUTLER: Your Honor, two things. First, I would  
17 like to just briefly -- it's a requirement that this form of  
18 order be mutually acceptable, and the debtors affirm on the  
19 record that it's mutually acceptable to the debtors. I'd like  
20 to make sure that it's also mutually acceptable to the  
21 administrative agent and the required lenders, please?

22 MR. BERNSTEIN: Don Bernstein, from Davis, Polk and  
23 Wardwell, LLP, for the administrative agent. It's acceptable  
24 to the administrative agent.

25 MR. SIEGEL: Glenn Siegel for the Elliot Management --

1 MR. BUTLER: You have to speak in the microphone.

2 MR. SIEGEL: Glenn Siegel for Elliot Management and  
3 the Manchester entities. It's acceptable to us.

4 MR. ABRAMS: Your Honor, Marc Abrams. The order is  
5 acceptable to the Silver Point entities as well.

6 MR. BUTLER: And the last point, Your Honor, is --

7 MR. TANNENBAUM: And the collective, Your Honor.

8 MR. BUTLER: -- I'm sorry. I almost forgot. He was  
9 hiding in the back of the room. Mr. Tannenbaum, would care to  
10 come up and speak into the microphone so we can all hear you.

11 MR. TANNENBAUM: Jeff Tannenbaum, Weil Gotshal, Your  
12 Honor, for General Motors. The order is acceptable --

13 THE COURT: Which General Motors?

14 MR. TANNENBAUM: The New General Motors.

15 THE COURT: Okay.

16 MR. BUTLER: Your Honor, one last point. There was an  
17 effort to add this since we could. Would it be Your Honor's  
18 intention to have chambers make the changes that you've written  
19 out and just enter the order -- docket the order, or how would  
20 you like us to proceed, given the -- if it's possible for  
21 chambers to do that --

22 THE COURT: I guess, we could do that.

23 MR. BUTLER: Thank you, Your Honor, very much.

24 THE COURT: Okay. Do we have it on a -- yes, we can  
25 do that.

1 MR. BUTLER: Thank you, Judge.

2 THE COURT: Okay. Thank you.

3 MR. BUTLER: We appreciate it.

4 IN UNISON: Thank you, Your Honor.

5 (Proceedings concluded at 4:48 p.m.)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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Penina Wolicki

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Date: August 3, 2009